

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24<sup>th</sup> day of February, two thousand sixteen.

PRESENT: AMALYA L. KEARSE,  
DENNIS JACOBS,  
CHESTER J. STRAUB,  
Circuit Judges.

- - - - -X  
CHAUNCEY MAHAN,  
Plaintiff-Appellant,

-v.-

15-1238-cv

ROC NATION, LLC, ROC-A-FELLA RECORDS,  
LLC, SHAWN CARTER p/k/a "JAY Z",  
Defendants-Appellees.  
- - - - -X

FOR APPELLANT: JAMES H. FREEMAN, JH Freeman Law,  
New York, NY.

FOR ROC-A-FELLA APPELLEE: ANDREW H. BART (Lindsay W. Bowen,  
on the brief), Jenner & Block LLP,  
New York, NY.

1 **FOR SHAWN CARTER APPELLEE:** ANDREW H. BART (Lindsay W. Bowen,  
2 on the brief), Jenner & Block LLP,  
3 New York, NY.  
4

5 **FOR ROC NATION APPELLEE:** CYNTHIA S. ARATO (Daniel J.  
6 O'Neill, on the brief), Shapiro  
7 Arato LLP, New York, NY.  
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9 Appeal from a judgment of the United States District Court  
10 for the Southern District of New York (Schofield, J.).  
11

12 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**  
13 **DECREED** that the judgment of the district court be **AFFIRMED** and  
14 the case be **REMANDED** for further proceedings.  
15

16 Chauncey Mahan appeals from the judgment of the United  
17 States District Court for the Southern District of New York  
18 (Schofield, J.) dismissing his claims alleging copyright  
19 co-ownership and conspiracy to commit conversion and/or  
20 trespass to chattel. We assume the parties' familiarity with  
21 the underlying facts, the procedural history, and the issues  
22 presented for review.

23 From 1999 to 2000, Mahan was a sound engineer for a number  
24 of songs recorded by Roc-A-Fella Records. For his work, Mahan  
25 received a flat fee but did not obtain a right to royalties.  
26 Roc-A-Fella Records released most of these songs on albums  
27 during 1999 and 2000 (the "Albums"); the rest remained  
28 unpublished (the "Unpublished Recordings"). The Albums bear  
29 a copyright notice that lists Roc-A-Fella Records as the sole  
30 copyright owner. In 2000, Roc-A-Fella Records filed separate  
31 copyright registrations for each of the Albums; these  
32 registration statements list Roc-A-Fella Records as the sole  
33 owner (and do not mention Mahan). The Albums sold millions of  
34 copies.

35 Nearly fourteen years later - during which interval Mahan  
36 received no royalties from the sales of the Albums - Mahan  
37 demanded that Roc Nation pay him a \$100,000 "storage fee" for  
38 keeping the Unpublished Recordings, or else Mahan would auction  
39 off the songs. Believing Mahan to be in unlawful possession  
40 of its property, counsel for Roc Nation contacted the LAPD,

1 which seized the Unpublished Recordings. The LAPD did not  
2 press charges against Mahan.

3 After the LAPD incident, Mahan sued for a declaratory  
4 judgment that he is a co-owner of the songs on the Albums and  
5 of the Unpublished Recordings and to obtain damages for the  
6 defendants' alleged conspiracy to commit conversion and/or  
7 trespass to chattel. The district court dismissed the  
8 copyright claims as time-barred and dismissed the claim  
9 alleging conversion and/or trespass to chattel for failure to  
10 state a claim because any communication that Roc Nation made  
11 to the LAPD was privileged. The district court also awarded  
12 defendants attorney's fees because Mahan's copyright claims  
13 were objectively unreasonable and doing so would deter future  
14 similarly frivolous lawsuits. This appeal followed.<sup>1</sup>

15 We review the grant of a motion to dismiss de novo, accept  
16 as true all factual allegations, and draw all reasonable  
17 inferences in favor of the plaintiff. Fink v. Time Warner  
18 Cable, 714 F.3d 739, 740-41 (2d Cir. 2013). We review the award  
19 of attorney's fees under the Copyright Act for abuse of  
20 discretion. Matthew Bender & Co. v. West Publ'g Co., 240 F.3d  
21 116, 121 (2d Cir. 2001).

22 **1.** Claims of co-ownership under the Copyright Act must be  
23 brought within three years of accrual. See Merchant v. Levy,  
24 92 F.3d 51, 56 (2d Cir. 1996). A claim accrues when a reasonably  
25 diligent plaintiff knows or has reason to know of the injury  
26 upon which the claim is premised. Id.; see also Kwan v.  
27 Schlein, 634 F.3d 224, 228 (2d Cir. 2011). Claims of  
28 co-ownership typically accrue once there has been an "express  
29 repudiation" of ownership. See Gary Friedrich Enter., LLC v.  
30 Marvel Characters, Inc., 716 F.3d 302, 317 (2d Cir. 2013). A  
31 claim for co-ownership can accrue when "a book is published  
32 without the alleged co-author's name on it" or "alleged  
33 co-owners learn they are entitled to royalties that they are  
34 not receiving." Id. Either scenario would satisfy the

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<sup>1</sup> After Mahan appealed, he filed for personal bankruptcy, triggering the automatic stay under 11 U.S.C. § 362. On February 17, 2016, the bankruptcy court lifted the automatic stay as to this action.

1 "express repudiation" standard to trigger accrual of a  
2 co-ownership claim.

3 By Mahan's own admission, it is clear that Roc-A-Fella  
4 Records had long ago expressly repudiated his ownership claims.  
5 The Albums, which have sold millions of copies since being  
6 released in 1999 and 2000, bear a copyright notice that lists  
7 Roc-A-Fella Records as the sole copyright owner. Mahan, an  
8 experienced sound engineer in the recording industry, had  
9 received no royalties for the sale of the Albums for fourteen  
10 years. These circumstances constitute clear "express  
11 repudiation" of Mahan's alleged co-ownership of the copyright.  
12 Mahan brought suit over ten years after the expiration of the  
13 applicable statute of limitations. All of his claims under the  
14 Copyright Act are time-barred.

15 **2.** Mahan seeks damages for conspiracy to commit  
16 conversion and/or trespass to chattel. Under California law  
17 (which governs this claim), communications made to law  
18 enforcement personnel enjoy absolute privilege. Hagberg v.  
19 Cal. Fed. Bank FSB, 32 Cal. 4th 350, 364 (2004). Mahan alleges  
20 that Roc Nation contacted the LAPD to report his purported  
21 unlawful possession of the Unpublished Recordings, leading to  
22 their seizure. This is precisely the type of communication  
23 that California immunizes from tort liability. See Action  
24 Apartment Ass'n, Inc. v. City of Santa Monica, 41 Cal. 4th 1232,  
25 1246 (2007).

26 **3.** The district court awarded attorney's fees to the  
27 defendants as the prevailing parties under 17 U.S.C. § 505,  
28 which provides that "[i]n any civil action under this title,  
29 the court in its discretion may . . . award a reasonable  
30 attorney's fee to the prevailing party." Applying the Fogerty  
31 v. Fantasy, Inc. factors, the district court concluded that  
32 Mahan's position was objectively unreasonable and that awarding  
33 fees would deter similar frivolous suits from being filed by  
34 others. 510 U.S. 517, 534 n.19 (1994). The district court  
35 awarded 90% of the lodestar amount. The district court did not  
36 abuse its discretion in awarding attorney's fees or in its fee  
37 calculation.

1       **4.** Defendants also seek attorney's fees and costs for this  
2 appeal under 17 U.S.C. § 505. Mahan's arguments here are as  
3 frivolous as those he made below; an award of attorney's fees  
4 would further the objectives of the Copyright Act by deterring  
5 such baseless appeals. See id. We remand to the district  
6 court for the limited purpose of calculating defendants'  
7 attorney's fees and costs for litigating this appeal. The  
8 district court in its discretion may determine whether to hold  
9 Mahan's counsel personally liable for the assessed attorney's  
10 fees and costs.

11       Accordingly, and finding no merit in all of Mahan's  
12 arguments, we hereby **AFFIRM** the judgment of the district court  
13 and **REMAND** the case for further proceedings consistent with this  
14 order.

15                                   FOR THE COURT:  
16                                   CATHERINE O'HAGAN WOLFE, CLERK